In the World Trade Organization
Panel Proceedings

Australia – Anti-Dumping Measures on A4 Copy Paper

(DS529)

Second integrated executive summary by Australia

Geneva, 5 July 2019
TABLE OF CONTENTS

I. AUSTRALIA ACTED CONSISTENTLY WITH ARTICLE 2.2 IN DISREGARDING INDONESIAN DOMESTIC PRICES IN DETERMINING THE "NORMAL VALUE" ............................................................................................................................................................1
   A. Australia Properly Established There Was a "Particular Market Situation" .........................1
   B. Australia Properly Found That, Because of the "Particular Market Situation", Domestic Sales Did Not "Permit a Proper Comparison" .................................................................................................1
   C. Indonesia Continues to Misrepresent the Practices and Findings of the Anti-Dumping Commission in Relation to "Particular Market Situation" and "Permit a Proper Comparison" .................................................................................2
   D. Indonesia's Arguments with Respect to "Particular Market Situation" and "Permit a Proper Comparison" Have No Merit .....................................................................................................................3
   E. Government Intervention Can Result in the Domestic Price Not Being Suitable to Use as the Basis for the Normal Value ................................................................................................................5
   F. Footnote 2 of Article 2.2 of the Anti-Dumping Agreement Provides No Support for Indonesia's Arguments ........................................................................................................................................5
   G. Indonesia has Admitted That Domestic Prices and Export Prices Were Not "Equally Affected" by the Low-Cost Inputs ..................................................................................................................6

II. AUSTRALIA ACTED CONSISTENTLY WITH ARTICLES 2.2 AND 2.2.1.1 OF THE ANTI-DUMPING AGREEMENT IN ITS DETERMINATION OF THE CONSTRUCTED NORMAL VALUE OF A4 COPY PAPER ...................................................................................................................7
   A. Australia was Not Required to Calculate the Hardwood Pulp Component of the Constructed Normal Value on the Basis of the Records of Indah Kiat and Pindo Deli ....................................................................................................................................................................7
      1. Indonesia's interpretation of the first sentence of Article 2.2.1.1 reads out the word "normally" ..................................................................................................................................................7
      2. The Anti-Dumping Commission did not base its decision to discard the hardwood pulp component of the record of Indah Kiat and Pindo Deli on the second condition of Article 2.2.1.1 ................................................................................................................8
      3. Australia's interpretation does not make the second Ad Note and the NME provisions in Accession Protocols redundant ........................................................................................................9
      4. Indonesia's arguments with respect to the Anti-Dumping Commission's decision to discard the hardwood pulp component of the records of Indah Kiat and Pindo Deli are incorrect ........................................................................................................9
B. The Anti-Dumping Commission was Correct to Use the "Pulp Benchmark" for the Hardwood Pulp Component of the Constructed Normal Value

1. The use of the "pulp benchmark" resulted in a proper determination of the "cost of production in the country of origin" under Article 2.2

2. Contrary to Indonesia's arguments, the "pulp benchmark" was not the cost of producing hardwood pulp in South America or Brazil or the sales price of hardwood pulp in South America or Brazil

3. No further adaptation of the pulp benchmark was required

4. Indonesia has no basis to rescile from its admission that the prevailing export price was a proper amount to use as the hardwood pulp component of the constructed normal value

5. Indonesia's reliance on EU – Biodiesel (Argentina), EU – Biodiesel (Indonesia) and Ukraine – Ammonium Nitrate is misplaced

III. INDONESIA HAS FAILED TO DEMONSTRATE THAT AUSTRALIA ACTED INCONSISTENTLY WITH ARTICLE VI:2 OF THE GATT 1994 AND WITH ARTICLE 9.3 OF THE ANTI-DUMPING AGREEMENT

IV. AUSTRALIA HAS NOT NULLIFIED OR IMPAIRED BENEFITS ACCRUING DIRECTLY OR INDIRECTLY TO INDONESIA

V. CONCLUSION
### TABLE OF CASES

<table>
<thead>
<tr>
<th>Short Title</th>
<th>Full Case Title and Citation</th>
</tr>
</thead>
</table>
### GLOSSARY OF ABBREVIATIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Short Title</th>
<th>Full Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Dumping</td>
<td>Agreement on the Implementation of Article VI of GATT 1994</td>
</tr>
<tr>
<td>Agreement</td>
<td></td>
</tr>
<tr>
<td>Customs Regulation</td>
<td>Customs (International Obligations) Regulation 2015 (Cth)</td>
</tr>
<tr>
<td>DSB</td>
<td>Dispute Settlement Body</td>
</tr>
<tr>
<td>GATT 1994</td>
<td>General Agreement on Tariffs and Trade 1994</td>
</tr>
<tr>
<td>GOI</td>
<td>Government of Indonesia</td>
</tr>
<tr>
<td>Indah Kiat</td>
<td>PT Indah Kiat Pulp &amp; Paper Tbk</td>
</tr>
<tr>
<td>Pindo Deli</td>
<td>PT Pindo Deli Pulp and Paper Mills</td>
</tr>
<tr>
<td>RAK</td>
<td>PT Riau Andalan Kertas</td>
</tr>
<tr>
<td>SCM Agreement</td>
<td>Agreement on Subsidies and Countervailing Measures</td>
</tr>
<tr>
<td>SMG</td>
<td>Sinar Mas Group of companies</td>
</tr>
<tr>
<td>Vienna Convention</td>
<td>Vienna Convention on the Law of Treaties</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
LIST OF EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Exhibit Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDN-04</td>
<td>Final Report No. 341 Alleged Dumping of A4 Copy Paper Exported from the</td>
</tr>
<tr>
<td></td>
<td>Federative Republic of Brazil, the People's Republic of China, the Republic</td>
</tr>
<tr>
<td></td>
<td>of Indonesia, and the Kingdom of Thailand and Alleged Subsidisation of A4</td>
</tr>
<tr>
<td></td>
<td>Copy Paper Exported from the People's Republic of China and the Republic of</td>
</tr>
<tr>
<td></td>
<td>Indonesia, 17 March 2016</td>
</tr>
</tbody>
</table>
I. **AUSTRALIA ACTED CONSISTENTLY WITH ARTICLE 2.2 IN DISREGARDING INDONESIAN DOMESTIC PRICES IN DETERMINING THE "NORMAL VALUE"**

A. **Australia Properly Established There Was a "Particular Market Situation"**

1. The proper Vienna Convention interpretation of "particular market situation" is any condition, state or combination of circumstances in respect of the buying and selling of the like product (i.e. A4 copy paper) in the market of the exporting country (i.e. Indonesia) that is distinguishable and not general.\(^1\)

2. Indonesia is incorrect to argue that the Anti-Dumping Commission’s finding in respect of the "particular market situation" was "limited to hardwood timber and pulp" and was "based exclusively on the price of an input."\(^3\) Rather: (a) the lowered cost and price of logs and hardwood pulp, alone, were not the "particular market situation";\(^4\) (b) an integral part of the "particular market situation" finding was that the price of A4 copy paper in Indonesia was artificially low;\(^5\) was significantly below regional benchmarks;\(^6\) and reflected the lowered cost and price of logs and hardwood pulp in Indonesia that resulted from the programs and policies of the Government of Indonesia;\(^7\) (c) the Final Report expressly stated that "low input costs, of themselves, are not determinative of a market situation";\(^8\) that "a market situation assessment primarily concerns the domestic market for like goods";\(^9\) and that "conditions in a significant input market that do not distort the market for like goods will not found a market situation finding".\(^10,11\) It is thus also not the case that the Anti-Dumping Commission found that the fact that "a low-priced input [was] used equally to produce A4 copy paper for the domestic and export markets constitute[d] [the] "particular market situation.""\(^12\)

B. **Australia Properly Found That, Because of the "Particular Market Situation", Domestic Sales Did Not "Permit a Proper Comparison"**

3. The phrase "such sales do not permit a proper comparison" in Article 2.2 is not defined in the Anti-Dumping Agreement, and no particular methodology is prescribed for determining whether domestic sales do, or do not, permit a proper comparison with the export price. An investigating authority therefore has discretion with respect to the methodology it employs, provided that the methodology rests upon a proper interpretation of Article 2.2.\(^13\) Interpreting the phrase "such sales do not permit a proper comparison" is a contextual exercise. The immediate context establishes that "such sales do not permit a proper comparison" – that is, they are "not suitable" to use as the basis for the normal value – where the resultant prices would not allow an investigating authority to conduct a suitable and accurate comparison to: (a) ascertain whether the like product is to be considered as being dumped; and (b) determine the margin of dumping.\(^14\)

---

1. Australia's first written submission, paras. 97-106.
2. Indonesia's second written submission, para. 3.
3. Indonesia's second written submission, para. 13.
4. Australia's written response to question 6 following the first substantive meeting with the Parties, footnote 29.
7. Final Report, Exhibit IDN-04, section A2.9.4, p. 174; see also Australia's first written submission, paras. 114-115.
10. Final Report, Exhibit IDN-04, section A2.8.5.2, p. 162. See also Australia's opening statement at the first substantive meeting with the Parties, para. 31 and Australia's written response to question 13 following the first substantive meeting with the Parties, para. 84.
11. Australia's second written submission, para. 37.
12. Indonesia's written response to question 5 following the first substantive meeting with the Parties, p. 11.
13. Australia's written response to question 5 following the second substantive meeting with the Parties, para. 36.
14. Australia first written submission, paras. 118-132; Australia's written response to question 15 following the first substantive meeting with the Parties, paras. 95-103; Australia's second written submission, paras. 168, 170 and 172;
4. The broader context identifies the relevant characteristics of unsuitability in this investigation, including where domestic prices are affected by government intervention that distorts costs and prices, where they are fixed in a manner incompatible with normal commercial practice, and where they are fixed according to criteria which are not those of the marketplace.15 Those characteristics were present and were evident in the price of A4 copy paper in Indonesia. The domestic sales did "not permit a proper comparison" to the export price. The lowered domestic price was quite properly relevant to the "particular market situation" analysis and to the "permit a proper comparison" analysis.16

C. Indonesia Continues to Misrepresent the Practices and Findings of the Anti-Dumping Commission in Relation to "Particular Market Situation" and "Permit a Proper Comparison"

5. Indonesia's claims and arguments are predicated on incorrect descriptions of the practice and findings of the Anti-Dumping Commission in respect of "particular market situation" and "permit a proper comparison". Contrary to Indonesia's submissions: (a) Australia does not find that a "particular market situation" exists every time that an input is distorted – and, in this case, the Anti-Dumping Commission undertook a detailed and exhaustive assessment of whether a "particular market situation" existed, which extended beyond considering whether an input price was distorted; (b) the Anti-Dumping Commission's finding in respect of "particular market situation" was not "based exclusively on the price of an input";17 (c) Australia does consider whether the domestic price would "permit a proper comparison" with the export price – and, in this case, the Anti-Dumping Commission established and concluded that the domestic price was not suitable to use as the basis for the "normal value" i.e. that the domestic sales did not "permit a proper comparison" with the export price; (d) Australia demonstrably did not simply proceed directly to determining a constructed normal value;18 (e) Australia does not interpret the term "particular market situation" to mean "any situation that is not normal";19 and (f) Australia's interpretation does not provide for a "broad grant of authority to Members for disregarding domestic prices any time the investigating authority determines something about prices is not "normal"".20

6. Indonesia is incorrect in arguing that Australia's interpretation of the phrase "particular market situation" would "turn the provision into a grant of authority for Members to disregard domestic prices in market economies in almost any situation".21 Contrary to Indonesia's argument, Australia's definition of "particular market situation" is in no way akin to "any situation".22 Furthermore, in order to discard domestic sales in determining the "normal value", an investigating authority must also find that, because of that "particular market situation", domestic sales "did not permit a proper comparison." And, before an investigating authority can impose anti-dumping duties based on a finding of a "particular market situation", it must also find that: (a) the export price is below the third country export price or below the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits; and (b) the resultant "dumping" has caused injury to the domestic industry.23

---

Australia's opening statement at the second substantive meeting with the Parties, para. 12; and Australia's written response to question 5 following the second substantive meeting with the Parties, para. 36.
15 Australia's second written submission, paras. 172-181 and Australia's opening statement at the second substantive meeting with the Parties, para. 13.
16 Australia's opening statement at the second substantive meeting with the Parties, paras. 14-15.
17 Indonesia's second written submission, para. 13.
18 Australia's first written submission, para. 155.
19 Indonesia's written response to question 2(b) following the first substantive meeting with the Parties, p. 8.
20 Indonesia's written response to question 10(b) following the first substantive meeting with the Parties, p. 14.
21 Indonesia's second written submission, para. 9.
22 Indonesia's second written submission, para. 9.
23 Australia's opening statement at the second substantive meeting with the Parties, paras. 60-64.
D. Indonesia's Arguments with Respect to "Particular Market Situation" and "Permit a Proper Comparison" Have No Merit

7. In order to satisfy the requirements of Article 2.1, and hence be suitable to use as the basis for the "normal value", the "domestic price" must be of the correct nature and quality. The Appellate Body in *US – Hot-Rolled Steel* made this clear when it said: "The text of Article 2.1 expressly imposes four conditions on sales transactions in order that they may be used to calculate normal value: first, the sale must be "in the ordinary course of trade"; second, it must be of the "like product"; third, the product must be "destined for consumption in the exporting country"; and, fourth, the price must be "comparable"."24 The aim of the exercise is to derive a valid foundation on which to base the "normal value", which is then compared to the export price. The entire focus of Article 2.2 is on the domestic sales and their suitability to use as a basis for the "normal value".25

8. In all situations where an investigating authority can discard domestic prices – sales outside of the ordinary course of trade, low volume of sales, command economy, non-market economy conditions, incompatibility with normal commercial practice, and non-marketplace criteria – the analysis as to whether the domestic price is a "comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country" concentrates on the conditions in the domestic market for the like product. Contrary to Indonesia's arguments, the analysis is not concerned at all with the export price or the comparison between the domestic price and the export price.26

9. Indonesia is conflating the steps of the dumping investigation. As Indonesia itself has recognised: (a) "Article 2 first describes what sales should be in the dataset for normal value and export price and then defines how those datasets are to be evaluated";27 (b) "determining whether a proper comparison is possible [is not] equivalent to calculating a dumping margin";28 (c) the evaluation of whether the domestic sales "permit a proper comparison" "is performed in the stage that is still determining what sales [, if any,] are in the [normal value] dataset";29 (d) at the stage of evaluating whether the domestic sales "permit a proper comparison" "the dumping margin analysis is not yet being performed";30 and (e) if the result of that "evaluation" is that there are no "remaining above cost domestic sales", then the "normal value" is determined on the basis of "third country sales … or constructed normal value".31 32

10. Despite this recognition, Indonesia continues to advocate that "as long as it is possible to examine whether price discrimination is occurring by comparing domestic [sales] to export sales, then such sales permit a proper comparison"33 and that "a proper comparison is possible when the investigating authority can determine whether price discrimination is occurring [by comparing the actual domestic prices to the actual export prices]".34 However, the stage of the dumping investigation when an investigating authority determines whether, because of the "particular market situation", domestic sales "permit a proper comparison" is different from the stage of the dumping investigation when an investigating authority determines the appropriate "dataset" to use for the "export price". Indonesia recognises this when it states that "Article 2 also contains a provision (Article 2.3) specifying how the export price dataset is to be

---

25 Australia's opening statement at the second substantive meeting with the Parties, paras. 75-76.
26 Australia's written response to questions 22 and 23 following the second substantive meeting with the Parties, para. 120.
27 Indonesia's written response to question 26 following the second substantive meeting with the Parties, para. 58.
28 Indonesia's written response to question 24 following the second substantive meeting with the Parties, para. 64.
29 Indonesia's written response to question 24 following the second substantive meeting with the Parties, para. 64.
30 Indonesia's written response to question 24 following the second substantive meeting with the Parties, para. 64.
31 Indonesia's written response to question 24 following the second substantive meeting with the Parties, para. 65.
32 Australia's comments on Indonesia's response to question 24 following the second substantive meeting with the Parties, para. 113.
33 Indonesia's written response to question 26 following the second substantive meeting with the Parties, para. 80. (emphasis added)
34 Indonesia's written response to questions 22 and 23 following the second substantive meeting with the Parties, para. 52.
established" and that "the export price dataset can be based on one of three possibilities". It is illogical for Indonesia to argue that, at the stage of the dumping investigation that determines the "dataset" for the "normal value", an investigating authority should be considering whether comparing the actual domestic prices and the actual export prices would show the extent of "price discrimination". This is because at that stage of the dumping investigation the "dataset" for the "export price" has not yet been established.

11. There are three separate and distinct tests set out in the Anti-Dumping Agreement: (a) the "normal value" dataset is determined under Article 2.1 and Article 2.2; (b) the "export price" dataset is determined under Article 2.1 and Article 2.3; and (c) the resulting dataset for the "export price" is compared with the resulting dataset for the "normal value" under Article 2.4. Indonesia's argument ignores this by advocating that, under Article 2.2, the actual domestic prices should form the basis of the "normal value" whenever comparing those actual domestic prices to the actual export prices would show whether "price discrimination" (and, hence, dumping) is occurring. But an investigating authority has not yet established whether the actual export prices should form the basis of the "export price" that it will subsequently use to determine the margin of dumping under Article 2.4. The actual export prices cannot be relevant to determining whether the domestic sales "permit a proper comparison" to the "export price" under Article 2.2 because, under Article 2.3, that "export price" may not even be based on the actual export prices. Thus, contrary to Indonesia's arguments, the fact that the Anti-Dumping Commission "did not take the export price into consideration" in deciding whether or not to discard the domestic sales under Article 2.2 does not mean that "its interpretation and application of Article 2.2 [is] inconsistent with its WTO obligations".

12. Indonesia is also incorrect when it argues that "[i]f a producer sells at the same low price in the domestic market and export market, that is not dumping and it is not regulated by the Anti-Dumping Agreement" and is also incorrect when it argues that "[i]f a producer sells at the same low price in sales in the ordinary course of trade in the domestic market and in sales in the export market, that is not dumping". The GATT 1994 and the Anti-Dumping Agreement define dumping as being when the export price is below the "normal value". Thus, the fact that the export price and the price of domestic sales (or the price of domestic sales in the ordinary course of trade) are the same does not necessarily mean that there is no dumping. If the domestic price is not a "comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country", then an investigating authority must not use it as the "normal value". Indonesia ignores the alternative bases for "normal value (being third country export prices and constructed normal value) that are available: (a) if there are "no sales of the like product in the ordinary course of trade"; and (b) if, "because of the

35 Indonesia's written response to question 26 following the second substantive meeting with the Parties, para. 74.
36 Indonesia's written response to question 26 following the second substantive meeting with the Parties, para. 74.
37 See also Indonesia's written response to question 26 following the second substantive meeting with the Parties, paras. 71-75.
38 Australia's comments on Indonesia's written response to question 24 following the second substantive meeting with the Parties, paras. 114-116.
39 Australia's comments on Indonesia's written response to question 24 following the second substantive meeting of the Parties, paras. 117-119.
40 Indonesia's second written submission, para. 38.
41 Indonesia's second written submission, para. 38.
42 Indonesia's first written submission, para. 102.
43 Indonesia's written response to question 3 following the second substantive meeting with the Parties, para. 5. (emphasis added)
44 Australia's comments on Indonesia's written response to question 3 following the second substantive meeting with the Parties, paras. 7-12.
45 Indonesia's written response to question 15 following the first substantive meeting with the Parties, p. 17.
particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison to the export prices".46

14. As clearly set out in Article 2.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, "dumping" occurs when the export price is below the "normal value", not merely when "the pricing practice of an exporting firm [is] to charge a lower price for exported goods than it does for the same goods sold domestically".47 And, as clearly set out in Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b) of the GATT 1994, there are certain circumstances where an investigating authority is required to not use the domestic prices of the like product as the basis for the "normal value". One of those circumstances is where, "because of the particular market situation … such sales do not permit a proper comparison" with the export price. This is the circumstance before the Panel in this dispute.48

E. Government Intervention Can Result in the Domestic Price Not Being Suitable to Use as the Basis for the Normal Value

15. There is nothing in the text of the GATT 1994 or the Anti-Dumping Agreement to support Indonesia's argument that "government involvement … falls exclusively within the province of the SCM Agreement"49 or that "the Anti-Dumping Agreement is concerned solely with the behaviour of individual producers or exporters absent express language indicating otherwise".50 Furthermore, the basis of Australia's "particular market situation" finding was not that the Government of Indonesia provided goods for less than adequate remuneration.51

F. Footnote 2 of Article 2.2 of the Anti-Dumping Agreement Provides No Support for Indonesia's Arguments

16. Indonesia argues that "the "proper comparison" when a "particular market situation" exists is between the domestic sales price and the export sales price".52 But the comparative examination discussed in footnote 2 only addresses the relative magnitudes of the domestic sales and the export sales – it certainly does not consider the price of the domestic sales in comparison to the price of the export sales. Furthermore, the overarching question under footnote 2 is whether the domestic sales were of a sufficient magnitude "to provide for a proper comparison" – the focus remains on the attributes of the domestic sales.53 Indonesia recognised this when it suggested that domestic sales might "not permit a proper comparison" in the context of a "low volume of … sales" if: (a) they are "not … representative of how the exporter would behave over a larger volume of sales";54 (b) there are "unusual transactions";55 or (c) "the evidence establishes" that "the sales are … unsuitable."56

17. Thus, Indonesia appears to have recognised that in order to be suitable to use as the basis for the "normal value", the "domestic price" must be of the correct nature and quality, even if the sale is in the ordinary course of trade.57 This is a key shift in Indonesia's argument because Indonesia acknowledges that there may be something inherent in the "domestic sales" that make them "unreliable" – or, as

46 Australia's second written submission, para. 161.
47 Indonesia's first written submission, para. 91. (footnote omitted)
48 Australia's second written submission, para. 163.
49 Indonesia's first written submission, para. 93.
50 Indonesia's written response to question 10(b) following the first substantive meeting with the Parties, pp. 13-14.
51 Australia's second written submission, paras. 111-122.
52 Indonesia's second written submission, para. 37. (emphasis added)
53 Australia's written response to question 5 following the second substantive meeting with the Parties, para. 32.
54 Indonesia's written response to question 21 following the second substantive meeting with the Parties, para. 46. (emphasis added)
55 Indonesia's written response to question 21 following the second substantive meeting with the Parties, para. 46. (emphasis added)
56 Indonesia's written response to question 21 following the second substantive meeting with the Parties, para. 49. (emphasis added)
57 See Australia's opening statement at the second substantive meeting with the Parties, para. 74.
Australia has explained, "unsuitable" – for use as the basis for the "normal value", even if they are in the ordinary course of trade. And, crucially, whether or not the domestic sales are "[un]representative", "unsuitable" or "unsuitable" has nothing to do with the "comparison" between the actual domestic price and the actual export price.\footnote{Australia's comments on Indonesia's written response to questions 5 and 21 following the second substantive meeting with the Parties, paras. 35-36.}

G. Indonesia has Admitted That Domestic Prices and Export Prices Were Not "Equally Affected" by the Low-Cost Inputs

18. Indonesia argued that domestic prices and export prices were "equally affected" because "the same inputs were used to make A4 copy paper sold to the Indonesian domestic market and exported to Australia."\footnote{Indonesia's second written submission, para. 15.} It argued that this meant there was no "particular market situation"\footnote{Indonesia's second written submission, paras. 3, 13-14, and 32.} and that this meant that the domestic sales permitted a "proper comparison".\footnote{Indonesia's first written submission, paras. 115-122; Indonesia's second written submission, paras. 15-16 and 39-42; Indonesia's opening statement at the second substantive meeting with the Parties, para. 32; and Indonesia's closing statement at the second substantive meeting with the Parties, para. 6.} It argued that "whether the input price affected domestic and export prices is relevant under Indonesia's first and second claims".\footnote{Indonesia's second written submission, para. 19.}

19. Indonesia states that, in respect of its first and second claims, it is presenting the Panel "with narrow questions that do not require [the Panel] to offer a definitive interpretation of "particular market situation" or "proper comparison".\footnote{Indonesia's assertion that the "low-price input" equally affected the domestic price and the export price is integral to Indonesia's argument as to why such a "low-price input" could not result in a "particular market situation" and would not prevent a "proper comparison". However, Indonesia admitted at the second substantive meeting with the Parties that the domestic price and the export price were not "equally affected" by the lowered cost and price of logs and hardwood pulp. Thus, the "narrow questions" that Indonesia poses must both be answered in the positive – that is, even on Indonesia's arguments, the "low-price input" can lead to a "particular market situation" and the "low-price input" does prevent a "proper comparison".} In the words of Indonesia, these "narrow questions" are "whether a low-price input used identically to produce merchandise for the domestic and export market constitutes a "particular market situation" within the narrow meaning of Article 2.2 of the Anti-Dumping Agreement (claim 1) or prevents a proper comparison (claim 2)".\footnote{Indonesia's opening statement at the second substantive meeting with the Parties that the government intervention would have changed the margin between the domestic price and the export price of A4 copy paper, so that margin would not show the exporter's "international price discrimination". Thus, even on Indonesia's argument, this would mean that the domestic sales did "not permit a proper comparison" and the Anti-Dumping Commission was required to discard the domestic prices as the basis for the "normal value".} Indonesia's assertion that the "low-price input" equally affected the domestic price and the export price is integral to Indonesia's argument as to why such a "low-price input" could not result in a "particular market situation" and would not prevent a "proper comparison". However, Indonesia admitted at the second substantive meeting with the Parties that the domestic price and the export price were not "equally affected" by the lowered cost and price of logs and hardwood pulp. Thus, the "narrow questions" that Indonesia poses must both be answered in the positive – that is, even on Indonesia's arguments, the "low-price input" can lead to a "particular market situation" and the "low-price input" does prevent a "proper comparison".\footnote{Australia's comments on Indonesia's written response to question 20(a) following the second substantive meeting with the Parties, para. 38.} On Indonesia's argument, the crucial question is "whether [the] alleged situations involving government policies in the domestic market actually made any difference to the determination of the margin of dumping that would arise from a comparison between each individual Indonesian exporter's domestic prices and its export prices".\footnote{Indonesia's written response to question 2(b) following the first substantive meeting with the Parties, p. 8.} Indonesia has admitted that the domestic price and the export price were not "equally affected" by the lowered cost and price of logs and hardwood pulp. Thus, Indonesia has admitted that the government intervention would have changed the margin between the domestic price and the export price of A4 copy paper, so that margin would not show the exporter's "international price discrimination". Thus, even on Indonesia's argument, this would mean that the domestic sales did "not permit a proper comparison" and the Anti-Dumping Commission was required to discard the domestic prices as the basis for the "normal value".\footnote{Australia's response to question 4 following the second substantive meeting with the Parties, para. 20.}

\footnote{Australia's comments on Indonesia's written response to questions 5 and 21 following the second substantive meeting with the Parties, paras. 35-36.}
21. Australia questions whether Indonesia has made out a prima facie case in respect of its first and second claims. Even if the Panel accepted all of Indonesia's arguments on Indonesia's first and second claims, the Panel could not as a matter of law rule in favour of Indonesia on those claims.68 This is because Indonesia has admitted that an integral part of its argument in respect of those claims – the alleged fact that the domestic price and the export price were "equally affected" by the reduction in the cost and price of the logs and hardwood pulp – is not true.69 Australia recalls, in this regard, that the Panel "cannot make the case for a complainant".70 71

II. AUSTRALIA ACTED CONSISTENTLY WITH ARTICLES 2.2 AND 2.2.1.1 OF THE ANTI-DUMPING AGREEMENT IN ITS DETERMINATION OF THE CONSTRUCTED NORMAL VALUE OF A4 COPY PAPER

A. Australia was Not Required to Calculate the Hardwood Pulp Component of the Constructed Normal Value on the Basis of the Records of Indah Kiat and Pindo Deli

1. Indonesia's interpretation of the first sentence of Article 2.2.1.1 reads out the word "normally"

22. Indonesia argues that the word "normally" appears in the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement in order to specify that the exporter's records must be used unless one (or both) of the conditions in the first sentence of Article 2.2.1.1 are not satisfied.72 But, if that had been the intention of the provision, the word "normally" would not have been included. Indonesia's interpretation strips the word "normally" of any effect at all. Indonesia's interpretation is that the first sentence of Article 2.2.1.1 means the same thing with the word "normally" included as it would mean without the word "normally" included. But the qualification of the verb "shall" by the adverb "normally" must be given meaning and effect. Interpreting the first sentence of Article 2.2.1.1 in a way that requires that the "costs … be calculated on the basis of records kept by the exporter or producer under investigation"

69 Australia also notes that in the Request for the Establishment of a Panel by Indonesia, Indonesia stated that the legal basis of its first claim was that Australia's finding of a "particular market situation" was "incorrect and inconsistent with Article 2.2". In developing this claim in its submissions, Indonesia argued that the use of the same hardwood pulp in A4 copy paper sold domestically and A4 copy paper exported to Australia meant that the domestic price and the export price were "similarly affected" (Indonesia's second written submission, para. 2), that "domestic and export prices were equally affected by [the] situation" (Indonesia's second written submission, para. 3), that the Anti-Dumping Commission should have "examine[d] whether the situation affects domestic and export prices", and that Indonesia had provided "proof the low price inputs equally affected domestic and export prices" (Indonesia's second written submission, paras. 13-14; see also para. 15). In its response to question 4 following the second substantive meeting with the Parties, Indonesia conceded that, in fact, the domestic price and the export price were not "equally affected".

Australia also notes that in the Request for the Establishment of a Panel by Indonesia, Indonesia stated that the legal basis of its second claim was that "Australia did not properly consider that such domestic sales price permitted a proper comparison with the Indonesian producers' export price of A4 copy paper to Australia since Indonesian A4 copy paper producers used the same raw material of the same cost to produce A4 copy paper for domestic, Australian and other export markets". In developing this claim in its submissions, Indonesia argued that the use of the "same raw material" meant that the domestic price and the export price were "equally affected", which is why a "proper comparison" was permitted (see, for example, Indonesia's first written submission, paras. 115-122; Indonesia's second written submission, paras. 39-42; Indonesia's opening statement at the second substantive meeting with the Parties, para. 32; and Indonesia's closing statement at the second substantive meeting with the Parties, para. 6). In its response to question 4 following the second substantive meeting with the Parties, Indonesia conceded that, in fact, the domestic price and the export price were not "equally affected".

71 Australia's comments on Indonesia's written response to question 4 following the second substantive meeting with the Parties, paras. 26-29.
72 Indonesia's first written submission, para. 131; Indonesia's opening statement at the first substantive meeting with the Parties, para. 44; Indonesia's written response to question 20(a) following the first substantive meeting with the Parties, p. 20; and Indonesia's second written submission, paras. 56-59.
whenever the two conditions in Article 2.2.1.1 are satisfied – as Indonesia does\textsuperscript{73} – renders the word "normally" inutile and redundant.\textsuperscript{74}

23. The proper Vienna Convention interpretation of the first sentence of Article 2.2.1.1 is that where the circumstances in respect of the records are not normal and ordinary, the investigating authority is not required to calculate costs on the basis of records kept by the exporter or producer under investigation, even if the two conditions in Article 2.2.1.1 are satisfied.\textsuperscript{75} Australia's interpretation is fully consistent with the findings of panels and the Appellate Body in relation to the meaning of "normally" in Article 2.2.1.1.\textsuperscript{76} Notably, the panel and Appellate Body in \textit{EU – Biodiesel (Argentina)} left open the possibility of there being circumstances beyond a failure to satisfy the two expressly stated conditions in Article 2.2.1.1 in which an investigation authority would not be required to calculate costs on the basis of records kept by the exporter or producer under investigation.\textsuperscript{77, 78}

24. The Anti-Dumping Commission was faced with circumstances that were not "normal and ordinary" with respect to the hardwood pulp component of the records of Indah Kiat and Pindo Deli. Even if the two conditions in Article 2.2.1.1 were satisfied, a constructed normal value calculated on the basis of the records kept by Indah Kiat and Pindo Deli in respect of hardwood pulp would not have been an "appropriate proxy for the price of the like product in the ordinary course of trade in the domestic market of the exporting country when the normal value cannot be determined on the basis of domestic sales",\textsuperscript{79} because, like the domestic sales price that had been found unsuitable to use as the basis of the "normal value", it would have reflected the "particular market situation".\textsuperscript{80} If the Anti-Dumping Commission had used the amounts for hardwood pulp in the records kept by Indah Kiat and Pindo Deli then the resultant "normal value" for A4 copy paper would simply have reflected the unsuitability of the domestic sales. Such a result would have been inconsistent with a harmonious interpretation of the applicable provisions.\textsuperscript{81}

2. The Anti-Dumping Commission did not base its decision to discard the hardwood pulp component of the record of Indah Kiat and Pindo Deli on the second condition of Article 2.2.1.1

25. Indonesia argues that the Anti-Dumping Commission's finding that "the actual cost of pulp recorded by exporters in their records does not reasonably reflect a competitive market cost" was "unmistakably made pursuant to the second condition of Article 2.2.1.1 of the Anti-Dumping Agreement".\textsuperscript{82} But subsection 43(2) of the \textit{Customs Regulation} – which requires consideration of whether the records "reasonably reflect competitive market costs associated with the production or manufacture of like goods" – gives effect to both the second condition of the first sentence of Article 2.2.1.1, and to the word "normally" in Article 2.2.1.1.\textsuperscript{83} The Anti-Dumping Commission's reasoning in support of its decision to discard the hardwood pulp component of the records of Indah Kiat and Pindo Deli was

\textsuperscript{73} Indonesia's first written submission, paras. 124 and 136.

\textsuperscript{74} See, for example, Australia's second written submission, paras. 197-203 and 226.

\textsuperscript{75} Australia's first written submission, para. 194.


\textsuperscript{78} Australia's second written submission, para. 231.

\textsuperscript{79} That is, they were not suitable to fulfil the basic purpose of determining a constructed normal value under Article 2.2 – see Appellate Body Report, \textit{EU – Biodiesel (Argentina)}, para. 6.24 (footnote omitted) and Panel Report, \textit{EU – Biodiesel (Argentina)}, para. 7.233. See also Panel Report, \textit{Thailand – H-Beams}, para. 7.112; and Panel Report, \textit{US – Softwood Lumber V}, para. 7.278.

\textsuperscript{80} See Australia's first written submission, para. 215; Australia's written response to question 20(c) following the first substantive meeting with the Parties, para. 141; and Australia's second written submission, para. 219.

\textsuperscript{81} Australia's opening statement at the second substantive meeting with the Parties, para. 21.

\textsuperscript{82} Indonesia's written response to question 21 following the first substantive meeting with the Parties, para. 21.

\textsuperscript{83} See Australia's written response to Panel questions 20(c) and 23 following the first substantive meeting with the Parties, paras. 132-142 and 169-171; and Australia's second written submission, para. 209.
consistent with a reliance on the word "normally" in Article 2.2.1.1, rather than a reliance on the second condition of Article 2.2.1.1 not being satisfied.\footnote{84 Australia's written response to question 20(c) following the first substantive meeting with the Parties, paras. 130 and 138-142.}

3. **Australia’s interpretation does not make the second Ad Note and the NME provisions in Accession Protocols redundant**

26. Indonesia argues that Australia’s interpretation of the "particular market situation" provision of Article 2.2 permits the discarding of domestic prices in situations beyond those covered by the second Ad Note to Article VI:1 of the GATT 1994 and the NME provisions in certain Accession Protocols.\footnote{85 Indonesia's second written submission, paras. 5, 9, 12 and 43-52.} Indonesia goes so far as to suggest that adopting Australia's interpretation would make the second Ad Note and those NME provisions "unnecessary"\footnote{86 Indonesia's second written submission, para. 5. See also Indonesia's second written submission, para. 52.} and that such a result is "absurd".\footnote{87 Indonesia's second written submission, para. 6.}

27. However, in making this argument, Indonesia (and China\footnote{88 See China's written response to question 4 to the third parties following the first substantive meeting with the Parties, paras. 37-42.}) ignore the fact that the investigating authority's discretion in determining the "normal value" is materially different under Article 2.2 than it is under the second Ad Note and the NME provisions in the Accession Protocols. If the domestic price is discarded as the basis for the normal value under Article 2.2, the methodology that an investigating authority must use to determine the "normal value" must be either: (a) the "comparable price of the like product when exported to an appropriate third country, provided that this price is representative"; or (b) "the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits". The requirement that a "representative" export price or the "cost of production in the country of origin"\footnote{89 "[P]lus a reasonable amount for administrative, selling and general costs and for profits" as per Article 2.2.} be used as the basis for the alternative "normal value" is not present in the second Ad Note or the NME provisions in the Accession Protocols. Rather, they have been interpreted to permit the "normal value" to be based on prices and costs in a market economy third country. Article 2.2 does not allow for the use of such a "surrogate" or "analogue" country methodology. Thus, the effect on the margin of dumping (and hence the anti-dumping duties) of a finding under Article 2.2 is materially different from a finding under the second Ad Note or the NME provisions in the Accession Protocols.\footnote{90 Australia's opening statement at the second substantive meeting with the Parties, paras. 105-108.}

4. **Indonesia’s arguments with respect to the Anti-Dumping Commission's decision to discard the hardwood pulp component of the records of Indah Kiat and Pindo Deli are incorrect**

28. Indonesia argues that if Australia had not "improperly linked a "particular market situation" to a producer's input cost" then "there would not be a problem using the producer's costs to construct the normal value."\footnote{91 Bur, as stated in the Final Report, "low input costs, of themselves, are not determinative of a market situation",\footnote{92 Final Report, Exhibit IDN-04, section A2.8.6.3, p. 165.} that a market situation assessment primarily concerns the domestic market for like goods",\footnote{93 Final Report, Exhibit IDN-04, section A2.8.5.2, p. 162.} and that "conditions in a significant input market that do not distort the market for like goods will not found a market situation finding".\footnote{94 Final Report, Exhibit IDN-04, section A2.8.5.2, p. 162.}

29. Indonesia argues that the "problem" is that the Anti-Dumping Commission found that the amounts for hardwood pulp in the records of Indah Kiat and Pindo Deli were unsuitable to use as the hardwood pulp component of the cost of production of A4 copy paper in Indonesia. But Indonesia has effectively conceded that the "pulp benchmark" that the Anti-Dumping Commission instead used – which was different to the amounts for hardwood pulp in the records of Indah Kiat and Pindo Deli – was the
proper amount to use for the hardwood pulp component of the cost of production of A4 copy paper in Indonesia.95

30. This is because Indonesia has acknowledged that the prevailing export price of hardwood pulp was the proper amount to use for the hardwood pulp component of the "cost of production of [A4 copy paper] in Indonesia." 96 And Australia has demonstrated that the "pulp benchmark" was virtually identical to that prevailing export price.97 Using the amounts for hardwood pulp that were in the records of Indah Kiat and Pindo Deli would have been the real "problem" because: (a) contrary to the findings of the Appellate Body in EU – Biodiesel (Argentina), those records would not have resulted in the constructed normal value being an "appropriate proxy for the price of the like product in the ordinary course of trade in the domestic market of the exporting country when the normal value cannot be determined on the basis of domestic sales",98 and (b) contrary to Article 2.2 of the Anti-Dumping Agreement, they would not have resulted in the derivation of the proper "cost of production of [A4 copy paper] in [Indonesia]."99

B. The Anti-Dumping Commission was Correct to Use the "Pulp Benchmark" for the Hardwood Pulp Component of the Constructed Normal Value

1. The use of the "pulp benchmark" resulted in a proper determination of the "cost of production in the country of origin" under Article 2.2

31. The Anti-Dumping Commission's use of the "pulp benchmark" yielded a "cost of production in the country of origin" under Article 2.2 which properly included the full costs of production of the like product in the country of origin, including those costs that were not incurred, in whole or in part, as a cash cost to specific entities producing the like product. Those full costs of production continued to exist notwithstanding the "particular market situation" – but they were not all incurred as a cash cost by Indah Kiat and Pindo Deli, and hence were not reflected in their records.100

32. Indonesia improperly equates the cash costs incurred by Indah Kiat and Pindo Deli to produce and acquire the hardwood pulp, respectively, with the hardwood pulp component of the "cost of production of [A4 copy paper] in [Indonesia]" under Article 2.2.101

33. But the cost of producing hardwood pulp and the cost of acquiring hardwood pulp are not necessarily the same as the cost of consuming hardwood pulp in the production of A4 copy paper.102 As Australia has established, and as Indonesia itself has acknowledged, the prevailing export price of hardwood pulp was a proper amount to use for the hardwood pulp component of the "cost of production of [A4 copy paper] in [Indonesia]" in this case.103 Australia has demonstrated that: (a) the "pulp benchmark" used by the Anti-Dumping Commission was virtually identical to that prevailing export price;104 and (b) Indah Kiat's cost to produce hardwood pulp and Pindo Deli's cost to acquire hardwood pulp were both different to the "pulp benchmark." 105 Clearly, as found by the Anti-Dumping Commission, the amounts in the records of Indah Kiat and Pindo Deli for hardwood pulp were not

---

95 Australia's second written submission, paras. 241-249.
96 See, for example, Indonesia's opening statement at the first substantive meeting with the Parties, para. 49, Australia's closing statement at the first substantive meeting with the Parties, paras. 26-29, and Australia's second written submission, paras. 241-249.
97 Australia's second written submission, paras. 241-249.
99 Australia's opening statement at the second substantive meeting with the Parties, para. 102.
100 See Australia's second written submission, paras. 259-260.
101 Australia's opening statement at the second substantive meeting with the Parties, para. 25.
102 Australia's opening statement at the second substantive meeting with the Parties, para. 26.
103 See, for example, Indonesia's opening statement at the first substantive meeting with the Parties, para. 49, Australia's closing statement at the first substantive meeting with the Parties, paras. 26-29, and Australia's second written submission, paras. 241-249.
104 Australia's second written submission, paras. 241-249.
105 Australia's opening statement at the second substantive meeting with the Parties, paras. 23-24.
suitable to use for the hardwood pulp component of the "cost of production of [A4 copy paper] in [Indonesia]". Rather, the proper amount to use was the "pulp benchmark", which was determined in an entirely appropriate manner and based on suitable benchmark prices.\textsuperscript{106}

34. By contrast, for one of the other Indonesian exporters (RAK), the Anti-Dumping Commission found that its transfer prices for purchases of hardwood pulp in Indonesia from a related company were consistent with the benchmark prices used to derive the "pulp benchmark". The Anti-Dumping Commission thus calculated the constructed normal value of A4 copy paper for RAK on the basis of its records,\textsuperscript{107} because a constructed normal value calculated on the basis of those transfer prices (and RAK's other costs) would have been an "appropriate proxy for the price of the like product in the ordinary course of trade in the domestic market of the exporting country when the normal value cannot be determined on the basis of domestic sales".\textsuperscript{108}

35. Indonesia does not argue that there were export taxes or other export restrictions on hardwood pulp. It does not deny that, unlike the situations in \textit{EU – Biodiesel (Argentina)} and \textit{Ukraine – Ammonium Nitrate}, the input in this case – hardwood pulp – could be exported at its prevailing competitive export price, which was virtually identical to the "pulp benchmark" used by the Anti-Dumping Commission. Thus, the "pulp benchmark" reflects the amount foregone when the hardwood pulp was consumed in the production of A4 copy paper in Indonesia rather than being exported.\textsuperscript{109} Furthermore, the benchmark prices used to derive the "pulp benchmark" were consistent with the confidential transfer prices in RAK's records for its purchases of hardwood pulp in Indonesia from a related company.\textsuperscript{110}

36. The use of the "pulp benchmark" is also consistent with the Appellate Body's observation that "the scope of the obligation to calculate the costs on the basis of the records in the first sentence of Article 2.2.1.1 is narrower than the scope of the obligation to determine the cost of production in the country of origin in Article 2.2".\textsuperscript{111, 112}

2. Contrary to Indonesia's arguments, the "pulp benchmark" was not the cost of producing hardwood pulp in South America or Brazil or the sales price of hardwood pulp in South America or Brazil

37. Indonesia argues that the "benchmark pulp price Australia substituted for the costs recorded in the Indonesian producers' records represents the cost of producing pulp in South America and Brazil",\textsuperscript{113} that it represents the "pulp price in Brazil and South America";\textsuperscript{114} and that it was "the free on board South America and Brazil price".\textsuperscript{115} All of these statements are incorrect.

38. Rather, the "pulp benchmark": (a) consisted of monthly and quarterly import pulp prices into China and Korea based on an average c.i.f. price for hardwood pulp originating from Brazil and South America;\textsuperscript{116} (b) was "based on verified actual transaction prices collected through broad systematic surveys of small, medium and large size participants, including both buyers and sellers";\textsuperscript{117} (c) was the price at which hardwood pulp originating in South America and Brazil was sold in Indonesia's primary export markets, namely China and Korea; (d) was virtually identical to the average of the four price series

\textsuperscript{106} Australia's opening statement at the second substantive meeting with the Parties, para. 29.
\textsuperscript{107} Final Report, Exhibit IDN-04, section 6.9.2.2, p. 52.
\textsuperscript{109} Australia's second written submission, para. 256.
\textsuperscript{110} Australia's opening statement at the second substantive meeting with the Parties, para. 28.
\textsuperscript{111} Appellate Body Report, \textit{EU – Biodiesel (Argentina)}, para. 6.73. (emphasis added)
\textsuperscript{112} Australia's opening statement at the second substantive meeting with the Parties, para. 30.
\textsuperscript{113} Indonesia's opening statement at the first substantive meeting with the parties, p. 24. See also Indonesia's first written submission, para. 168.
\textsuperscript{114} Indonesia's written response to question 28(a) following the first substantive meeting with the Parties, p. 22.
\textsuperscript{115} Indonesia's written response to question 35 following the second substantive meeting with the Parties, para. 97.
\textsuperscript{116} Australia's first written submission, para. 228 and footnote 241.
\textsuperscript{117} Australia's first written submission, para. 228 and footnote 247.
that Indonesia says the Anti-Dumping Commission could have used to "derive[,] the cost of pulp and, ultimately, paper production in Indonesia", consistent with Article 2.2; and (e) was virtually identical to the prevailing competitive export price of hardwood pulp from Indonesia, as represented by those four price series.119

3. No further adaptation of the pulp benchmark was required

39. Indonesia argues that Australia did not "make any adjustments to [the "pulp benchmark"] to derive the cost of production in Indonesia".120 It dismisses the adjustments for dry to wet pulp conversion, and the removal of SG&A, ocean freight and inland transportation charges, arguing that they were not relevant to deriving the cost of production of A4 copy paper in Indonesia.121

40. The Anti-Dumping Commission adapted the "pulp benchmark" specific to the circumstances of Indah Kiat and Pindo Deli. The Anti-Dumping Commission carefully considered submissions of the Government of Indonesia and the exporters in respect of the "pulp benchmark" and the required adaptations.122 Contrary to Indonesia's arguments, the adjustments made by the Anti-Dumping Commission were necessary to adapt the "pulp benchmark" so as to ensure the proper derivation of the cost of production in Indonesia specific to the circumstances of Indah Kiat and Pindo Deli.123

41. Indonesia argues that additional adaptation of the pulp benchmark was required.124 This is incorrect. Australia notes the following: (a) "50 to 60 per cent of total [pulp] production" in Indonesia is consumed in Indonesia125 – the rest is exported; (b) there was no significant difference between the price of hardwood pulp sourced by Asian importers from South America and the price of hardwood pulp sourced by Asian importers from Indonesia;126 (c) the prevailing competitive export price (i.e. the "pulp benchmark") would have been obtained for the Indonesian hardwood pulp if it had been exported from Indonesia rather than being consumed in the production of A4 copy paper, because there were no export tariffs or export quotas on hardwood pulp in Indonesia;127 (d) the prevailing competitive export price (i.e. the "pulp benchmark") was therefore a cost of production of A4 copy paper in Indonesia, because it was given up when the hardwood pulp was consumed in the production of A4 copy paper in Indonesia rather than being exported; (e) the benchmark prices used to derive the pulp benchmark were consistent with the confidential transfer prices in the records kept by one of the other Indonesian exporters (RAK) for its purchases of hardwood pulp in Indonesia from a related company;128 (f) the growing costs for acacia pulpwod in Indonesia were not significantly less than growing costs for eucalyptus pulpwod in South America;129 and (g) the Government of Indonesia and the Indonesian hardwood pulp producers provided no evidence to support their claims that it was cheaper to produce acacia pulpwod in Indonesia than in other Asian or South American countries.130, 131

118 Indonesia's opening statement at the first substantive meeting with the Parties, para. 49.
119 Australia's second written submission, para. 249.
120 Indonesia's opening statement at the first substantive meeting with the Parties, para. 46. (footnote omitted)
121 Indonesia's opening statement at the first substantive meeting with the Parties, para. 48 and Indonesia's written response to Panel question 29 following the first substantive meeting with the Parties, p. 24.
123 Australia's second written submission, para. 254.
124 Indonesia's first written submission, para. 168; Indonesia's opening statement at the first substantive meeting with the Parties, para. 48; and Indonesia's written response to question 29 following the first substantive meeting with the Parties, p. 24.
125 Final Report, Exhibit IDN-04, section A2.9.2.3, p. 167. (footnote omitted)
126 Final Report, Exhibit IDN-04, section A4.4, p. 231.
127 See Australia's first written submission, para. 114 and Final Report, Exhibit IDN-04, section A.2.9.2.6, p. 170.
131 Australia's second written submission, para. 256.
42. These circumstances and facts clearly establish that the "pulp benchmark" reflected the hardwood pulp component of the cost of production of A4 copy paper in Indonesia. Therefore, it was not necessary for the Anti-Dumping Commission to take additional steps beyond those taken to adapt the "pulp benchmark" when determining the hardwood pulp component of the constructed normal values for Indah Kiat and Pindo Deli.  

43. Indonesia is therefore simply incorrect when it argues that "the hardwood pulp price the Commission used had no connection whatsoever to Indonesia"; that "Australia did not attempt to calculate a pulp price in Indonesia" and that, by using the "pulp benchmark", "Australia failed to calculate the cost of production in the country of origin, i.e. Indonesia".  

44. The "cost of production in the country of origin" must include the full costs of production of the like product in the country of origin, including those costs that are not incurred, in whole or in part, as a cash cost to specific entities producing the like product, as is the case in this dispute.  

45. It has been accepted by panels and the Appellate Body that a non-arm's-length cost (i.e. a non-competitive market cost) in the records of a producer can be discarded and replaced by the arm's-length cost (i.e. the competitive market cost), even though nobody in the transaction incurs that arm's-length cost (i.e. the competitive market cost) as a cash cost. This is clear recognition of the rejection of recorded cash costs and their replacement with higher non-cash costs in the determination of the "cost of production in the country of origin" pursuant to Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement. Those higher non-cash costs equal the amount that the input supplier would have received for the input if that input supplier had sold the input at an arm's-length price (i.e. a competitive market price) rather than the non-arm's-length price (i.e. the non-competitive market price) reflected in the records of the producer. It is also the amount that the producer would have received for the input if that producer had sold the input at an arm's-length price (i.e. the competitive market price) rather than consuming it in the production of the product.  

46. Australia's use of the "pulp benchmark" – as adapted to the specific circumstances of Indah Kiat and Pindo Deli – ensured that the full amount of the hardwood pulp component of the "cost of production [of A4 copy paper] in [Indonesia]" was used to determine the constructed normal value, not just the amounts included in the records of Indah Kiat and Pindo Deli (which were merely the (lower) cash costs they respectively incurred to produce and acquire hardwood pulp).  

4. Indonesia has no basis to resile from its admission that the prevailing export price was a proper amount to use as the hardwood pulp component of the constructed normal value  

47. Indonesia has no legal or logical basis for its attempt to completely reverse its position that the prevailing export price of hardwood pulp was the proper amount to use for the hardwood pulp component of the "cost of production [of A4 copy paper] in [Indonesia]". Australia's submission of the evidence and information regarding the RISI and Hawkins Wright data was not untimely – rather, it was "necessary for purposes of rebuttal" within paragraph 5(1) of the Working Procedures and it was submitted by Australia at the first opportunity that Australia had to do so following the submission of the Parties' written responses to the Panel's questions following the first substantive meeting with the Parties. The data itself was "reliable" and the Government of Indonesia had full knowledge during the
investigation of the methodologies utilised by RISI to collect data. There was no need for the Anti-Dumping Commission to "remove profit"\textsuperscript{142} or to adjust for any "mark up".\textsuperscript{143} Contrary to Indonesia's arguments, the evidence on the record indicates that integrated paper producers in Indonesia do, in fact, "export pulp", and that they do so in significant quantities. Furthermore, hardwood pulp is a tradeable commodity, not "merely an intermediate stage in the paper production process" – Indonesia itself concedes that Indah Kiat provides hardwood pulp to Pindo Deli.\textsuperscript{144} Furthermore, the prevailing export price of hardwood pulp is a key factor\textsuperscript{145} that determines how much hardwood pulp is devoted to paper production as opposed to being sold on the open market and is a key factor\textsuperscript{146} that determines whether a producer will expand, contract, or abandon paper production.\textsuperscript{147}

48. Indonesia's arguments appear to be driven solely by the fact that Indonesia has realised that its acknowledgement that the prevailing export price of hardwood pulp was the proper amount to use for the hardwood pulp component of the "cost of production of [A4 copy paper] in [Indonesia]" is fatal to its third, fourth and fifth claims.\textsuperscript{148}

5. Indonesia's reliance on EU – Biodiesel (Argentina), EU – Biodiesel (Indonesia) and Ukraine – Ammonium Nitrate is misplaced

49. Indonesia asserts that the facts of this dispute are "almost identical" to the facts in EU – Biodiesel (Argentina) and EU – Biodiesel (Indonesia),\textsuperscript{149} that "there is no factual or legal basis for this Panel to interpret Article 2.2.1.1 in a manner at odds with" the decisions in EU – Biodiesel (Argentina), EU – Biodiesel (Indonesia) and Ukraine – Ammonium Nitrate,\textsuperscript{150, 151} that there are no "meaningful differences" between this dispute and those disputes,\textsuperscript{152} that "the fact pattern [in this dispute] is almost identical" to those disputes,\textsuperscript{153} and that "the facts [in this dispute] are indistinguishable in any meaningful way from" the facts in those disputes.\textsuperscript{154}

50. All of those assertions are incorrect. Firstly, none of those disputes considered the determination of a constructed normal value in circumstances where, because of a "particular market situation", domestic sales did not permit a proper comparison. Rather, they were all concerned with a situation where the domestic sales were found not to be in the ordinary course of trade. Secondly, all of those disputes concerned the interpretation and application of the second condition of Article 2.2.1.1, which is not before the Panel in this dispute. Thirdly, those disputes focussed on whether or not the second condition of Article 2.2.1.1 permitted an examination of the "reasonableness" of the costs recorded by the exporters in their records. But the "reasonableness" of the recorded costs was simply not part of the Anti-Dumping Commission's consideration. Fourthly, in relation to the main input to production, and in comparison to the hardwood pulp in the dispute that is before this Panel, neither the soybeans in EU – Biodiesel

\textsuperscript{142} Indonesia's written response to question 9 following the second substantive meeting with the Parties, para. 26.
\textsuperscript{143} Indonesia's written response to question 30(b) following the second substantive meeting with the Parties, para. 92.
\textsuperscript{144} Indonesia's first written submission, footnote 70.
\textsuperscript{145} With all other things held equal.
\textsuperscript{146} With all other things held equal.
\textsuperscript{147} See, for example, Australia's written response to question 33 following the second substantive meeting with the Parties, paras. 158-177 and Australia's comments on Indonesia's written responses to questions 9, 10, 29 and 30 following the second substantive meeting with the Parties, paras. 44-59 and 130-139.
\textsuperscript{148} Australia's comments on Indonesia's responses to questions 9, 10 and 29 following the second substantive meeting with the Parties, para. 62.
\textsuperscript{149} Indonesia's first written submission, para. 142.
\textsuperscript{150} Indonesia's first written submission, para. 145.
\textsuperscript{151} Australia notes that the panel decision in Ukraine – Ammonium Nitrate has been appealed and the panel's report has thus not been adopted by the DSB.
\textsuperscript{152} Indonesia's first written submission, para. 155.
\textsuperscript{153} Indonesia's first written submission, para. 162. Also, in Indonesia's closing statement at the first substantive meeting with the Parties, it stated that "Indonesia's third claim is based on nearly identical facts in the case law of EU – Biodiesel (Argentina), EU – Biodiesel (Indonesia) and Ukraine – Ammonium Nitrate (Russia)" (para. 5).
\textsuperscript{154} Indonesia's opening statement at the first substantive meeting with the Parties, para. 41.
(Argentina), the crude palm oil in EU – Biodiesel (Indonesia) or the gas in Ukraine – Ammonium Nitrate could be exported at the prevailing competitive export price by the producers of the like product. Fifthly, the “pulp benchmark” was not a hypothetical figure that might have been incurred under different circumstances or an amount that would have been incurred under "normal circumstances" Unlike the soybean benchmark used by the European Union investigating authority in EU – Biodiesel (Argentina), the “pulp benchmark” was not chosen precisely because it did not represent the relevant cost of hardwood pulp in Indonesia.

III. INDONESIA HAS FAILED TO DEMONSTRATE THAT AUSTRALIA ACTED INCONSISTENTLY WITH ARTICLE VI:2 OF THE GATT 1994 AND WITH ARTICLE 9.3 OF THE ANTI-DUMPING AGREEMENT

51. Indonesia's has acknowledged that its claims under Article VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement are entirely dependent on this Panel finding that Australia acted inconsistently with Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement in its determination of the "normal value" for Indah Kiat and Pindo Deli. Australia has demonstrated that its determination of the "normal value" for Indah Kiat and Pindo Deli was fully consistent with Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement. Indonesia's claims under Article VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement must therefore fail.

IV. AUSTRALIA HAS NOT NULLIFIED OR IMPAIRED BENEFITS ACCRUING DIRECTLY OR INDIRECTLY TO INDONESIA

52. No benefits accruing directly or indirectly to Indonesia under the GATT 1994 or the Anti-Dumping Agreement have been nullified or impaired by Australia.

V. CONCLUSION

53. Australia has conclusively rebutted the arguments that Indonesia has made in the course of this dispute – including those it has made in its responses to the questions from the Panel following the second substantive meeting with the Parties. Furthermore, Australia has conclusively shown that the measures challenged by Indonesia are consistent with those provisions of the GATT 1994 and the Anti-Dumping Agreement that Indonesia alleges Australia has violated. Indonesia has failed to establish that Australia's action violated the GATT 1994 or the Anti-Dumping Agreement and, in fact, Australia has demonstrated that its actions were entirely WTO-consistent. In addition, the submissions and evidence before the Panel establish that the Anti-Dumping Commission: (a) properly established the facts; (b) evaluated them in an unbiased and objective manner; and (c) provided a reasoned and adequate explanation as to: (i) how the evidence on the record supported its factual findings; and (ii) how those factual findings supported the overall determination.

54. Given the above – and recalling the level of deference accorded to an investigating authority under Article 17.6 of the Anti-Dumping Agreement – Australia respectfully requests that the Panel dismiss all of Indonesia’s claims.

156 Panel Report, Ukraine – Ammonium Nitrate, para. 7.89.  
157 Appellate Body Report, EU – Biodiesel (Argentina), para. 6.81.  
158 Australia's second written submission, paras. 262-269.  
159 Indonesia's written response to questions 31(a) and 31(b) following the first substantive meeting with the Parties, p. 24.  
160 Australia's second written submission, paras. 274-276.  
161 Australia's second written submission, para. 277.